IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 267 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ATUL LIMITED

Versus

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Appearance:

1. COMPANY PETITION No. 267 of 2004

MRS SWATI SOPARKAR for Petitioner No. 1

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 01/02/2005

ORAL JUDGEMENT

1. This is a petition filed under sections 78 & 100 to 103 of the Companies Act, 1956 seeking confirmation of the scheme of the capital reduction of the Company.

2. The petitioner company herein was promoted and commenced the business in the year 1976. The company has been engaged in the activities of manufacturing of vry wide range of dyes, dyes intermediates and chemicals. The company is a profit making and dividend paying company. However, as pointed out in greater detail in the petition, the company has substantial amount in Misc. Expenditure Account. Further, there is substantial decline in the value of the investments made by the company in some joint sector companies. Some of the loans and advances made by the company are also considered doubtful debts. Hence, on one hand it has substantial amount of misc. expenditure which is not written off, decline in the value of its investments, intangible assets and receivables, and on the other hand, it has substantial balance in Securities Premium Account and Capital Redemption Reserve. The company has proposed to use its Capital Redemption Reserve totally and Share Premium Account partly in order to right size the balance sheet of Company. It is, thus, proposed to restructure the Balance Sheet of the Company to bring it to a realistic level.

3. By a special resolution of the company, duly passed in accordance with Section 189 of the Companies Act, 1956, through the postal ballot, sent to shareholders along with the due notice as provided in the Act and results thereof being declared on the 27th day of December, 2004, it was resolved:

"RESOLVED THAT pursuant to Sections 78, 80 and 100 and other applicable provisions, if any of the Companies Act, 1956 and subject to the confirmation by the Court / Tribunal as provided under sec.100 of the Companies Act, 1956, and any other relevant approval as may be required, the Board of Directors of the Company be and is hereby authorized to utilize the credit balance in the Security Premium Account and Capital Redemption Reserve Account of the Company for the purpose of writing off of Misc. Expenditure of Rs.5286 Lacs and providing for Provision for Contingencies of Rs.2300 Lacs, totaling to Rs.7586 Lacs.

RESOLVED FURTHER THAT for the purpose of giving effect of the aforesaid resolution, the Board of Directors of the Company be and is hereby authorized to do and perform all acts, deeds or things as may be considered necessary or

expedient, including agreeing with changes/modifications, if any, as may be expedient or suggested by the Court/Tribunal."

4. It is pointed out in the petition that the proposed reduction does not involve diminution of any liability or repayment of paid up capital. In fact there is no actual reduction in the Share Capital of the company. However, since the Securities Premium account and Capital Redemption Reserve Account form the part of the capital in terms of sec. 78 and 80 of the Companies Act, 1956, respectively, the utilization of the amount lying in this account needs to be treated as Reduction of Capital. The above proposal is not likely to have any significant adverse impact on the networth of the Company for all practical purposes. In view of this, while admitting the Petition, this Court did not give any directions as required under section 101(2) of the Act and the same were dispensed with.

5. The petition was admitted by this court on 30th December, 2004 and the same was ordered to be advertised in Ahmedabad editions of "Indian Express" and " Jansatta - Loksatta". In compliance with the said direction, the notice of the petition were duly published on 8th January 2005 as per the affidavit dated 13th day of January 2005 filed by the clerk of the learned advocate for the petitioner. Pursuant to the said advertisement no one has come forward to raise any objection to the proposed capital reduction.

6. On question being asked by the court as to whether sec. 78 of the Companies Act permits the company to utilize share premium account and Capital Redemption Reserve Account for the purpose of writing off of the Misc. Expenditure of Rs. 5286 lacs and providing for provision for contingencies of Rs. 2300 lacs totaling to Rs. 7586 lacs. Mr. Soparkar ld. Sr. Counsel appearing with Mrs. Swati Soparkar ld. advocate for the petitioner has submitted that the conjoint reading of sub sec. (1) and (2) of Sec. 78 and also sec. 80 does envisage utilization of share premium account as well as Capital Redemption Reserve Account for such purposes. In this connection, Mr. Soparkar relies on the decision of the Madras High court in the case of Parry Confectionery Ltd, In re, 122 Company Cases 900, wherein the court has observed that while reading of two sub-sections of sec. 78 together, the conclusion that would follow would be that where a company proposes to apply its securities premium account in the manner provided for in sub-section (2), the provisions relating to reduction of capital

would not be attracted and the company can do so without either being required to pass a special resolution or seek the confirmation of court. Section 78(2) is however not exhaustive of the methods in which the securities premium account can be applied by the company and is only exhaustive of the methods in which such application can take place without following the reduction procedure. Where, however, a company proposes to apply its securities premium account in a manner other than that contemplated in sub-section(2), then the provisions relating to reduction of share capital would have to be followed in respect of such application. Mr. Soparkar has further submitted that the special resolution passed by the company clearly shows that the restructuring will not be prejudicial to the interest of the petitioner's creditors as the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid up capital. There is no reduction in the amount payable to any of the creditors. He has further submitted that it does not involve any out flow of cash and the same will not affect the normal operations of the petitioner or its ability to honour its commitments and to pay its debts, in the ordinary course of business. He has further submitted that sec. 100 of the Companies Act empowers a company limited by shares, if so authorized by its Articles, to reduce its share capital by special resolution. The circumstances mentioned in section 100(1)(a),(b) and (c) of the Act are only illustrative and not exhaustive and it is open to a company covered under section 100 of the Companies Act to reduce its securities premium account by passing a special resolution subject to the provisions of sec. 100 to 104 of the Act. He has further submitted that procedure under sec. 102 of the Act is not applicable to the proposed reduction and this court, therefore, vide its order passed on 27.12.2004 has held that looking to the facts of the case, the provisions of sec. 100(1)(2) shall not apply to the secured or unsecured creditors and hence an inquiry to ascertain the debts, claims and liabilities of or affecting the said company is not required to be held as the proposed reduction does not involve either the diminution of liability in respect of unpaid share capital or the payment to any share holder of any paid up capital. The court has, therefore, granted the prayer in terms of paragraph (b) of the Judges' Summons.

7. Mr. Soparkar has further relied on a decision of the Bombay High Court in the case of India Infoline Ltd., (2005)3 Comp. L.J. 134 (Bombay), wherein the court has held that considering the averments made and the object

and purpose of utilization of securities premium account for writing off of accumulated losses and for reduction of equity shares, and as a special resolution has been passed and accepted by share holders unanimously and as there is no secured creditors and as unsecured creditors have given their written consent, in this background and undisputed position, and in view of the settled principle that commercial wisdom and need of the company the interference of the court should be minimum, and there is nothing illegal or against the public policy pointed out or found on record, company petition deserved to be allowed.

Mr. Soparkar has further relied on the decisions of this court in following cases:

1) Order in Company Petition No. 53/2003 in the case of Contech Software Ltd. passed on 25.3.2003.

2) Order in Company Petition No. 170/2003 in the case of Vadilal Industries Ltd. passed on 1.9.2003.

3) Order in company Petition No. 204/2003 in the case of Abuzu Holdings Pvt. ltd. passed on 25.9.2003.

4) Order in Company Petition No. 313/2003 in the case of Bell Ceramics Ltd. passed on 12.3.2004.

5) Order in Company Petition No. 70/2004 in the case of Arvind Brands Ltd. passed on 30.4.2004.

8. Having perused the petition and more particularly, the reasons given in support of proposed reduction and having considered the judgments cited before this court, I am of the view that there is no reason not to confirm the proposed action of the petitioner to reduce its capital. The said proposal correctly brings out the real value of the assets of the Company and at the same time does not prejudicially affect any one as it does not involve extinguishments or diminution of the capital of the company nor does it involve pay off of any capital received by the Company. Accordingly, the resolution passed by the Postal Ballet and declared on 27th December, 2004, is hereby confirmed.

8. The form of the minute proposed to be registered under Sec.103(1)(b) is as follows:

MINUTE UNDER SEC. 103(1)

The Capital Redemption Reserve Account and the Security Premium Account of Atul Limited is by virtue of a Special Resolution of the company passed through a Postal Ballot and by virtue of the sanction granted by the High Court of Gujarat on 27th day of January 2005, reduced from Rs. 110.52 crores to Rs. 34.66 crores. A Special Resolution of the company has been passed through the Postal Ballot to the effect that upon the said reduction of the capital taking effect, the total amount lying in the Capital Redemption Reserve Account viz. Rs. 23.60 crores and an amount not exceeding Rs. 52.26 crores out of the balance standing in the Securities Premium Account of the Company as at April 1, 2004, totaling to Rs. 75.86 crores in aggregate be utilized for the adjustment of the sum of Rs. 75.86 crores towards Deferred Lease Rentals, Payments towards VRS Scheme and Contingencies (including provisions).

9. The petitioner is directed to publish the Notice of Confirmation of Reduction of Capital and approving of Minutes in Indian Express- English daily and Jansatta-Gujarati daily, both in Ahmedabad editions only within 14 days of the registration of the order with the Registrar of Companies.

10. The petition is accordingly disposed of with no order as to costs.

(K.A. PUJ, J.)

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